

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT WITH ANIMAL
PROFILING INTERNATIONAL, INC.**

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as chapter 11 trustee (the "Trustee") for Eastern Livestock Co., LLC (the "Debtor" or "ELC"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee and Animal Profiling International, Inc. ("API") pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as Exhibit "A" (the "Settlement Agreement"). In support of this Settlement Motion, the Trustee respectfully represents the following:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing on December 28, 2010. ECF No. 110.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee pursuant to 11 U.S.C. § 1104. ECF No. 102

3. Based on his investigation, the Trustee has concluded that on or about June 10, 2006, API executed and delivered to ELC a Promissory Note (the "Note") in the original principal sum of \$50,000.00.

4. The Trustee alleged that the amount due and owing to ELC under the Note, as of November 28, 2012, was as follows:

Current Principal	\$50,000.00
Contract Interest through November 27, 2012	\$53,452.40
<u>TOTAL DUE</u>	<u>\$103,452.40</u>

plus all interest accruing after November 28, 2012, and all expenses and attorneys' fees incurred by the Trustee (the "Note Balance").

5. The Trustee commenced Adversary Proceeding No. 12-59105 against API on December 3, 2012 to collect the Note Balance.

6. In its response to the Trustee's Complaint, API alleged that, as part of the Note, ELC had agreed to, upon certain conditions, convert the Note Balance into an equity position in API. API further alleges that ELC subsequently waived all prerequisites and agreed to the transfer of the Note Balance into an equity stake in API. Finally, API alleges that the equity stake held by ELC is worth little if anything.

7. To avoid the cost, expense, and delay of litigation, API is willing to make payments for the total sum of \$6,299.70 (one lump sum payment of \$3,149.85 with the remaining balance of \$3,149.85 paid over six (6) months) (the "Settlement Amount") in

satisfaction of the Trustee's claim, provided the Court enters a final, non-appealable order approving this Settlement Motion (the "Settlement Order") and as consideration for the stock transfer as outlined in Section 2 of the Settlement Agreement.

8. In the exercise of his sound business judgment, the Trustee has determined that a settlement of the Claim in the Settlement Amount is in the best interests of the Debtor's estate and its creditors.

The Settlement

9. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and API pursuant to the terms and conditions set forth in the Settlement Agreement.

Basis for Relief

10. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the "best interests of the estate" test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation's probability of success, complexity, expense, inconvenience, and delay, "including the possibility that disapproving the settlement will cause wasting of assets."

In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d at 426 (citations omitted).

11. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. The alternative to the settlement is litigation of the claims between the Trustee and API, would result in expenses and delay and create the possibility of an outcome that would result in a smaller recovery to the estate.

WHEREFORE, if no objections to this Settlement Motion are filed, the Parties request that the Court enter the Settlement Order approving the Settlement Agreement. A proposed form of order is attached as Exhibit "B". If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court. The Trustee requests that any notice of this motion include language that any objection to this Settlement Motion set forth with specificity any claim that the objecting party has to the Settlement Amount.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following party/parties through the Court's Electronic Case Filing System. Party/parties may access this filing through the Court's system.

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